

Attachment A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA **FILED**

FEB 24 2020

WILBERT MCKREITH

Your full name

U.S. DISTRICT COURT-WVND
CLARKSBURG, WV 26301

FEDERAL CIVIL RIGHTS
COMPLAINT
(BIVENS ACTION)

v.

Civil Action No.: 1:19cv106
(To be assigned by the Clerk of Court)

B.O.P. STAFF MR. K. PEARCE
B.O.P. STAFF MR. SHEARER
B.O.P. STAFF MR. J. PHIPPS

1:20cv33
Kleeh
Aloi
Williams

Enter above the full name of defendant(s) in this action

I. JURISDICTION

This is a civil action brought pursuant to **Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)**. The Court has jurisdiction over this action pursuant to Title 28 U.S.C. §§ 1331 and 2201.

II. PARTIES

In Item A below, place your full name, inmate number, place of detention, and complete mailing address in the space provided.

A. Name of Plaintiff: Wilbert MCKREITH Inmate No.: 14398050
Address: U.S.P. ATWATER, P.O. BOX 019001, ATWATER, CA
95301

In Item B below, place the full name of each defendant, his or her official position, place of employment, and address in the space provided.

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B. Name of Defendant: MR. K. PEARCE
 Position: FEDERAL BUREAU OF PRISON SHU-STAFF
 Place of Employment: UNITED STATES PENITENTIARY HAZELTON
 Address: P.O. BOX 2000, BRUCETON MILLS, WV 26525

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ No

If your answer is "YES," briefly explain: B.O.P. STAFF MR. K. PEARCE AND OTHERS TOOK ME AND MY CELLMATE OUT OF THE CELL FOR A CELL SEARCH. MR. K. PEARCE RETURN TO ME AND STATED "CUT UP NIGGER" MR. K. PEARCE CALLED ME A NIGGER

B.1 Name of Defendant: B.O.P. STAFF LT. MR. SHEARER
 Position: SHU-LIEUTENANT
 Place of Employment: FEDERAL BUREAU OF PRISON U.S.P. HAZELTON
 Address: P.O. BOX 2000, BRUCETON MILLS, WV 26525

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ No

If your answer is "YES," briefly explain: MR. SHEARER HAD A CONVERSATION WITH MR. K. PEARCE AT THE TIME. MR. SHEARER GAVE THE ORDER OR REQUEST FOR THE USE OF FORCE TEAM AND APPLICATION OF RESTRAINTS FOR FOUR DAYS 6-16-2016 TO 6-19-2016

B.2 Name of Defendant: MR. J. Phipps
 Position: CAPTAIN - U.S.P. HAZELTON COMPLEX
 Place of Employment: UNITED STATES PENITENTIARY HAZELTON
 Address: P.O. BOX 2000, BRUCETON MILLS, WV 26525

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ No

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If your answer is "YES," briefly explain: MR. J. Phipps
HAD A CONVERSATION WITH THE SHU LT MR. SHEARER
AND MR. J. Phipps GAVE THE ORDER TO PLACE
I WILBERT MCKREITH "PLAINTIFF" IN RESTRAINTS FOR
FOUR DAYS 6-16-2016 to 6-19-2016 FOR NO RESULTS AT ALL.

B.3 Name of Defendant: NONE
Position: _____
Place of Employment: _____
Address: _____

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☐ Yes ☐ No

If your answer is "YES," briefly explain: _____

B.4 Name of Defendant: NONE
Position: _____
Place of Employment: _____
Address: _____

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☐ Yes ☐ No

If your answer is "YES," briefly explain: _____

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B.5 Name of Defendant: NONE
 Position: _____
 Place of Employment: _____
 Address: _____

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☐ Yes ☐ No

If your answer is "YES," briefly explain: _____

III. PLACE OF PRESENT CONFINEMENT

Name of Prison/ Institution: U.S.P. Atwater, P.O. Box 019001, Atwater, CA 95301

A. Is this where the events concerning your complaint took place?
☐ Yes ☒ No

If you answered "NO," where did the events occur?

U.S.P. HAZELTON, P.O. Box 2000, BRUCETON MILLS, WV 26525

B. Is there a prisoner grievance procedure in the institution where the events occurred? ☒ Yes ☐ No

C. Did you file a grievance concerning the facts relating to this complaint in the prisoner grievance procedure?
☒ Yes ☐ No

D. If your answer is "NO," explain why not: _____

E. If your answer is "YES," identify the administrative grievance procedure number(s) in which the claims raised in this complaint were addressed

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and state the result at level one, level two, and level three. **ATTACH GRIEVANCES AND RESPONSES:**

LEVEL 1 FEDERAL TORT CLAIM

LEVEL 2 _____

LEVEL 3 _____

IV. **PREVIOUS LAWSUITS AND ADMINISTRATIVE REMEDIES**

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action? ☐ Yes ☒ No

B. If your answer is "YES", describe each lawsuit in the space below. If there is more than one lawsuit, describe additional lawsuits using the same format on a separate piece of paper which you should attach and label: "IV PREVIOUS LAWSUITS"

1. Parties to this previous lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court: _____
(If federal court, name the district; if state court, name the county)

3. Case Number: _____

4. Basic Claim Made/Issues Raised: _____

5. Name of Judge(s) to whom case was assigned: _____

6. Disposition: _____
(For example, was the case dismissed? Appealed? Pending?)

7. Approximate date of filing lawsuit: _____

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8. Approximate date of disposition. Attach Copies: _____

- C. Did you seek informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part B?

☒ Yes ☐ No

- D. If your answer is "YES," briefly describe how relief was sought and the result. If your answer is "NO," explain why administrative relief was not sought.

FILE A TORT CLAIM, TORT AGAINST MY
BODY ~~IN THE AMOUNT~~ THE RESULT WAS DENIED

- E. Did you exhaust available administrative remedies?

☒ Yes ☐ No

- F. If your answer is "YES," briefly explain the steps taken and attach proof of exhaustion. If your answer is "NO," briefly explain why administrative remedies were not exhausted.

I FILE A TORT CLAIM, A TORT AGAINST MY BODY
MY BODY WAS OBJECTED TO RESTRAINTS FOR 4-DAYS
"PROOF OF TORT CLAIM EXHAUSTION ATTACH"

- G. If you are requesting to proceed in this action *in forma pauperis* under 28 U.S.C. § 1915, list each civil action or appeal you filed in any court of the United States while you were incarcerated or detained in any facility that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Describe each civil action or appeal. If there is more than one civil action or appeal, describe the additional civil actions or appeals using the same format on a separate sheet of paper which you should attach and label "G. PREVIOUSLY DISMISSED ACTIONS OR APPEALS"

1. Parties to previous lawsuit: NONE

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Plaintiff(s): _____

Defendant(s): _____

2. Name and location of court and case number:

_____3. Grounds for dismissal: ☐ frivolous ☐ malicious
☐ failure to state a claim upon which relief may be granted

4. Approximate date of filing lawsuit: _____

5. Approximate date of disposition: _____

V. STATEMENT OF CLAIM

State here, as **BRIEFLY** as possible, the facts of your case. Describe what each defendant did to violate your constitutional rights. **You must include allegations of specific wrongful conduct as to EACH and EVERY defendant in the complaint.** Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, you must number and set forth each claim in a separate paragraph. **UNRELATED CLAIMS MUST BE RAISED IN SEPARATE COMPLAINTS WITH ADDITIONAL FILING FEES. NO MORE THAN FIVE (5) TYPED OR TEN (10) NEATLY PRINTED PAGES MAY BE ATTACHED TO THIS COMPLAINT. (LR PL 3.4.4)**

CLAIM 1: B.O.P. STAFF MR. K. PEARCE CALL ME A NIGGER. MR. K. PEARCE REPORTED TO HIS LT. MR. SHEARER FALSE STATEMENTS ABOUT I "PLAINTIFF" WILL NOT COOPERATE. FALSE STATEMENTS MADE BY MR. K. PEARCE AFTER HE CALL ME A NIGGER. THEN REQUEST WAS MADE TO PLACE ME IN RESTRAINTS

Supporting Facts: TEXT CLAIM STATEMENT MADE AT FIRST

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SEE SUPPORTING FACTS. "FCC HAZELTON
ADMINISTRATIVE REMEDY INFORMAL RESOLUTION RESPONSE"
By MR. J. Phipps.

CLAIM 2: MR. SHEARER Lt, made ~~FAKE~~ FALSE
STATEMENTS to MR. J. Phipps IN REQUESTING TO
PLACE "PLAINTIFF" INTO RESTRAINTS AFTER MR. K.
PEARCE CALL "PLAINTIFF" A NIGGER

Supporting Facts: MR. J. Phipps - FCC HAZELTON
ADMINISTRATIVE REMEDY INFORMAL RESOLUTION RESPONSE
MR. J. Phipps MADE FALSE STATEMENTS AS TO ~~WHAT~~
NO B.D.P. POLICY OR PROCEDURES WERE BROKEN BY SHU
LIEUTENANT MR. SHEARER BY PLACING ME IN RESTRAINTS.

CLAIM 3: MR. K. PEARCE, MR. SHEARER AND MR. J. Phipps
IN VIOLATION OF B.D.P. POLICY # 5566.06, 8th
AMENDMENT RIGHTS, 4th AMENDMENT RIGHT TO DUE PROCESSES
AND STANDARDS OF B.D.P. EMPLOYEE POLICY # 3420.11

Supporting Facts: B.D.P. PROGRAM STATEMENT # 3420.11 NATURE
OF OFFENSE # 34 FALSIFICATION, MISSTATEMENTS.
MR. J. Phipps REPORT
INMATE DISCIPLINE DATA CHRONOLOGICAL DISCIPLINARY
RECORD.

CLAIM 4: _____

Supporting Facts: _____

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CLAIM 5:

Supporting Facts:

VI. INJURY

Describe **BRIEFLY** and **SPECIFICALLY** how you have been injured and the exact nature of your damages.

I WAS PLACED IN FULL RESTRAINTS FOR 4-DAYS FROM 6-16-2016 TO 6-19-2016, AFTER I WAS CALLED A NIGGER. IN VIOLATION OF 8th AMENDMENT, 4th AMENDMENT, IN VIOLATION OF B.D.P. POLICY # 5566.06. THERE WAS NO DUE PROCESS.

VII. RELIEF

State **BRIEFLY** and **EXACTLY** what you want the Court to do for you. Make no legal arguments. Cite no cases or statutes.

I WILL LIKE THIS COURT TO GRANT THIS BIVENS ACTION AT THIS TIME. I AM SEEKING DAMAGES FOR 8th AND 4th AMENDMENTS VIOLATION, DUE PROCESS VIOLATION. PUNITIVE DAMAGES FOR \$50,000.00

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DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained in the complaint is true and accurate. Title 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at U.S.P. Atwater, California on FEBRUARY 18, 2020.
(Location) (Date)


Your Signature